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WT 01-320

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of: )  
 )  
Verizon Wireless Petition for )  
Waiver of Section 64.402 of the )  
Commission's Rules )

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FEDERAL COMMUNICATIONS COMMISSION  
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Statement in Support of Petition for Waiver

The Secretary of Defense, Executive Agent of the National Communications System, through duly authorized counsel, hereby files this statement in support of the captioned petition for waiver.<sup>1</sup>

Verizon Wireless requests a waiver of applicable Commission Rules and Regulations to permit it to immediately provide wireless priority access service (PAS) to authorized National Security Emergency Preparedness (NS/EP) personnel in Washington, DC, New York, NY, Salt Lake City, UT and potentially other metropolitan areas.

The Commission recognized the need for PAS in its

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<sup>1</sup> Executive Order 12472, "Assignment of National Security and Emergency Preparedness Telecommunications Functions", April 3, 1984 (49 Fed. Reg. 13472), established the National Communications System. It consists of an administrative structure involving the executive agent, the Committee of Principals, the manager, and the telecommunication assets of the 22 Federal organizations represented on the Committee of Principals. Section 1(e) of EO 12472 designates the Secretary of Defense as the Executive Agent of the NCS.

Report and Order adopting PAS rules.<sup>2</sup> One need only point to the results of the horrific and unconscionable acts of September 11, 2001 for reaffirmation of the Commission's finding. As in previous emergencies, NS/EP responders attempted to use wireless communications yet could not due to system congestion. The attached Declaration of Brenton C. Greene, Deputy Manager of the National Communications System, describes that congestion, the difficulties it created, and urges Commission grant of the requested waiver. It further states that a technical solution allowing PAS to be offered in full compliance with Commission rules is expected to be in place in a year. When implemented, the need for a waiver will no longer exist.

In the PAS Order, the Commission addressed the issue of service provider liability. It concluded that providing priority access to authorized NS/EP uses in accordance with the PAS rules would be *prima facie* lawful and not unreasonable discrimination or an unreasonable preference under Section 202(a) of the Communications Act of 1934, as amended. Operations by Verizon Wireless under terms of the waiver should be afforded the same protection.

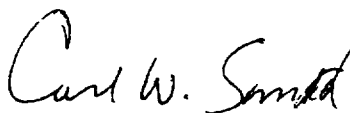
Wherefore, in view of the foregoing, the Secretary of Defense as Executive Agent of the National Communications

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<sup>2</sup> Establishment of Rules and Requirements for Priority Access Service,

System urges the Commission to grant the waiver sought by Verizon Wireless and to specifically include the same limitations on service provider liability as contained in the PAS Report and Order.

Respectfully submitted,



CARL W. SMITH *(W/S)*  
General Counsel



PAUL R. SCHWEDLER  
Deputy General Counsel, Regulatory  
and International Law  
Defense Information Systems Agency  
701 S. Courthouse Road  
Arlington, VA 22204  
(703) 607-6092

**Declaration****of****Mr. Brenton C. Greene****In Support of Verizon Wireless' Petition for Waiver**

1. I am Brenton C. Greene, Deputy Manager of the National Communications System (NCS).
2. As described in Executive Order 12472, one mission of the NCS is to assist the President, the National Security Council, the Director of the Office of Science and Technology Policy, and the Director of the Office of Management and Budget in the coordination of the planning for and provision of national security and emergency preparedness (NS/EP) communications for the Federal government under all circumstances, including crisis or emergency, attack, recovery and reconstitution.
3. In partial fulfillment of that responsibility, the NCS drafted and proposed Commission rules for wireless priority access service for NS/EP personnel. Recognizing the need, the Commission adopted those rules to be effective late last year. The voluntary rules are based on technology that is not yet available. Any wireless priority access service that can be currently offered must utilize

technology that does not permit full compliance with the existing Commission rules.

4. In direct response to the events of September 11, 2001, the NCS has arranged with Verizon Wireless to provide an immediate (beginning within the next 60 days) capability for wireless priority access service to NS/EP personnel in the Washington, DC, New York, NY, and Salt Lake City, UT areas. The proposed method of providing this essential service does not comply in all aspects with the Commission's rules.

5. The wireless priority access service to be provided, although not fully compliant with Commission rules, is vitally essential to the security of this nation. The United States was attacked on September 11, 2001. Some telecommunications assets were damaged. Undamaged assets were strained to and well beyond their limits. On information and belief, I understand wireless networks in Washington and New York experienced extraordinary demand, much greater than normal. Understandably, persons attempted calls to check on family members and friends. As a result, networks became congested rapidly and essential NS/EP calls could not be made. Priority access service to make the next wireless channel available to NS/EP personnel would have helped to alleviate those situations and


contributed to a more rapid response by Federal, State and local emergency personnel.

6. In addition to the Verizon Wireless arrangement for immediate implementation of PAS, the NCS has also sought proposals from industry for a solution that will be in full compliance with the current Commission rules regarding PAS. The NCS has asked that the solution be implemented in one year. When implemented, the need for the waiver will no longer exist.

7. I urge the Commission to grant Verizon Wireless' petition for waiver.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Arlington, VA on

November 2, 2001.

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Brenton C. Greene  
Deputy Manager, National  
Communications System

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## DEFENSE INFORMATION SYSTEMS AGENCY

FROM (NAME)	<u>Paul Schwedler</u>	TO (NAME)	<u>Jeannine Kowalski</u>
CODE	<u>Deputy General Counsel, Regulatory</u>	CODE	<u></u>
		COMPANY	<u>FC</u>
FAX PHONE		FAX PHONE	<u>202 418-2643</u>
DSN	<u>327-4344</u>	DSN	<u></u>
COMM	<u>(703) 607-4344</u>	COMM	<u></u>
PHONE	<u>(703) 607-6092</u>	DESTINATION PHONE	<u></u>
EMAIL ADDRESS	<u></u>	DSN	<u></u>
		COMM	<u></u>
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